

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MOISES PEREZ,

§

Plaintiff,

§

v.

CASE NO. 3:19-cv-00360

BODEGA LATINA CORPORATION D/B/A
EL SUPER,

§

Defendant.

§

§

**DEFENDANT BODEGA LATINA CORPORATION'S ANSWER
TO PLAINTIFF'S AMENDED PETITION**

Defendant Bodega Latina Corporation (sued as Bodega Latina Corporation d/b/a El Super) (“Bodega” or “Defendant”) hereby answers Plaintiff’s, Moises Perez (“Plaintiff”), First Amended Petition as follows:

DISCOVERY LEVEL

1. The allegations in paragraph 1 contain a statement to which no response is required.

PARTIES

2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and on that basis, denies the allegations in paragraph 2.

3. Answering paragraph 3, Defendant admits that Defendant is a foreign corporation.

Except as specifically admitted, Defendant denies each and every allegation contained in paragraph 3.

VENUE

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and on that basis, denies the allegations in paragraph 4.

CHRONOLOGY OF FACTS

5. Defendant denies Plaintiff's misdescription of the law as stated in paragraph 5.
6. Defendant admits that it has employees.
7. Defendant denies Plaintiff's misdescription of the law as stated in paragraph 7.
8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and on that basis, denies the allegations in paragraph 8.
9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and on that basis, denies the allegations in paragraph 9.
10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and on that basis, denies the allegations in paragraph 10.
11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and on that basis, denies the allegations in paragraph 11.
12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and on that basis, denies the allegations in paragraph 12.
13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and on that basis, denies the allegations in paragraph 13.
14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and on that basis, denies the allegations in paragraph 14.
15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and on that basis, denies the allegations in paragraph 15.
16. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and on that basis, denies the allegations in paragraph 16.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and on that basis, denies the allegations in paragraph 17.

CAUSES OF ACTION

18. Defendant denies the allegations in paragraph 18.

RETALIATION

19. Defendant denies the allegations in paragraph 19.

20. Defendant denies the allegations in paragraph 20.

FAMILY & MEDICAL LEAVE ACT

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 and on that basis, denies the allegations in paragraph 21.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and on that basis, denies the allegations in paragraph 22.

23. Defendant admits that it is a foreign corporation.

24. Defendant denies the allegations in 24 and subparagraph A.

NOTICE OF RIGHT TO SUIT

25. Defendant admits that Plaintiff attached what appears to be a Dismissal and Notice of Rights notice from the U.S. Equal Employment Opportunity Commission to his Petition. Except as specifically admitted, Defendant denies each and every allegation contained in paragraph 25.

HARMS AND LOSSES

26. To the extent Plaintiff asserts he is entitled to any recovery, Defendant denies Plaintiff's assertions. To the extent allegations in paragraph 26 contain a statement of Plaintiffs' claims, Defendant states that no answer is required.

27. Defendant denies the allegations in paragraph 27.

JURY TRIAL DEMAND

28. No response is required to paragraph 28.

REQUEST FOR DISCLOSURE

29. No response is required to paragraph 29.

ATTORNEY'S FEES AND COSTS

30. Defendant denies the allegations in paragraph 30.

GENERAL DENIAL

1. Defendant denies any allegations of the complaint, whether express or implied, that are not expressly admitted, denied, or qualified herein.

AFFIRMATIVE DEFENSES

In further answers to the Complaint, and as separate and distinct affirmative defenses, Defendant alleges as follows:

2. Defendant alleges that the Complaint, and each of the purported claims therein, fails to state facts sufficient to constitute a cause of action against it.

3. To the extent that any of Plaintiff's claims arose prior to the date of the applicable statute of limitations, Plaintiff's claims are barred by limitations.

4. To the extent that Plaintiff failed to mitigate his damages, Plaintiff's claims are barred on that basis.

5. Defendant asserts all applicable statutory damage caps to Plaintiff's claims.

6. Plaintiff is not entitled to liquidated damages because good faith efforts to comply with the Family and Medical Leave Act were made.

7. Plaintiff was terminated for legitimate, non-discriminatory, and non-retaliatory reasons.

8. Defendant alleges that Plaintiff's claims asserted in the Complaint are barred by the doctrine of unclean hands.

9. Defendant alleges that Plaintiff's claims are barred and/or reduced under the doctrine of after-acquired evidence.

10. Defendant alleges Plaintiff is not entitled to recover damages prayed for in the Complaint because at all times material herein, Defendant acted toward Plaintiff reasonably and in good faith.

11. Defendant is informed and believe that the Complaint, and each alleged cause of action therein, is barred by waiver. By his conduct, Plaintiff waived any right to recover any relief under the Complaint or any purported cause of action alleged therein.

12. Defendant is informed and believe that each and every alleged cause of action in the Complaint is barred by the doctrine of estoppel. Plaintiff has engaged in conduct with respect to the activities that are the subject of the Complaint, and by reason of said activities and conduct, is estopped from asserting any claim for damages or seeking any other relief against Defendants.

13. Defendant is informed and believes that each and every alleged cause of action in the Complaint is barred by the doctrine of laches. Plaintiff has engaged in unreasonable delay in commencing the litigation.

14. Defendant maintains that Plaintiff is not entitled to relief in that he failed to exhaust his administrative remedies.

15. Defendant is informed and believes and thereon alleges that Plaintiff has engaged

in conduct and activities tainted with bad faith, by reason of which Plaintiff should not be permitted to use the process of this court for furtherance of said bad faith.

16. Defendant alleges that the Complaint is barred, in whole or in part, because Plaintiff did not complain of unlawful activity to human resources for an extensive period of time. By Plaintiff's acts and omissions, he did not take steps to avoid any alleged harm.

17. Defendant alleges that if Plaintiff suffered any damages as a result of the facts alleged in his Complaint, which Defendant denies, Plaintiff is not entitled to recover the amount of damages alleged or any damages, including without limitation general and special damages, due to his failure to make reasonable efforts to mitigate or minimize the damages incurred.

Defendant presently has insufficient knowledge or information upon which to form a belief as to the availability of additional, as yet unstated, affirmative defenses. Therefore, Defendant reserves the right to assert additional affirmative defenses in the event discovery reveals that they would be appropriate.

Dated: January 13, 2020

Respectfully submitted,

By: /s/Samuel Garcia

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Attorneys for Defendant Bodega Latina Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January 2020, a copy of the above pleading was served via the District Court ECM/ECF system, and by first class United States mail, postage prepaid, on the following counsel of record:

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Attorneys for Plaintiff

/s/Samuel Garcia

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